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Estate Planning Overview and Issues in Self-Representation

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What is Your Estate?

Your Estate = Your Assets – Your Liabilities

- Assets include bank accounts, retirement plans, stocks and bonds, real estate, automobiles, certificates of deposit, life insurance proceeds, etc.
- Liabilities include car loans, mortgages, credit card debt, student loans, etc.
- Example: Joe has a house worth \$125,000, a car worth \$5,000, a checking account worth \$3,500, and a mortgage on his house with a balance of \$25,000. Joe's net estate is \$108,500 which is his assets (125,000+5,000+3,500) minus his liabilities (25,000).



What is Estate Planning?

- Preparing your estate for an orderly and efficient distribution during life and upon death
- Providing for the continuation or termination of a family or closely held business
- Reducing estate taxes, when applicable



Why Plan?

Planning allows you to control:

- Who will make health care decisions on your behalf if you are unable to do so
- Who will make financial decisions on your behalf if you are unable to do so
- Who will receive property when you die
- Who will be the guardian of your minor children if you die
- Who will be the executor of your estate



Who Should Plan?

- All individuals 18 years or older
- Planning is essential regardless of the size of your estate. No estate is too small to make planning unnecessary.
- Any individual recently married, recently widowed, recently divorced, had a child, inherited property, lost a loved one, moved to a new state, etc.



Common Estate Planning Documents

- Durable General Power of Attorney
- Health Care Power of Attorney
- Living Will Declaration
- Last Will & Testament (“Will”)
- Trust



Durable General Power of Attorney

- Also known as a Financial Power of Attorney
- Appoints a person as agent to manage your financial and/or personal affairs
- Avoids the necessity of a guardianship (an adult needs a guardianship if mentally disabled)
- Guardianship involves a judicial proceeding and ongoing court supervision (costly and time consuming)



Health Care Power of Attorney

- Gives another person (the health care agent) the power to make health care decisions in the event you lose the capacity to make informed health care decisions for yourself
- Also avoids the need for a guardianship over your person



Living Will Declaration

- Governs the use of life-sustaining treatment if you are terminally ill or permanently unconscious and unable to communicate with your doctor
- A living will takes the life-sustaining treatment decision out of others hands (e.g., family)



Last Will & Testament

- Directs who receives your estate when you die
- Appoints an executor of your estate.
- An Executor is the person who ensures the terms of your Will are carried out as directed
- Can appoint a guardian of minor children



Advantages of Having a Will

- Nominate a guardian of your minor children. If you fail to nominate a guardian then the probate court has sole discretion to select a guardian.
- Control who receives your property rather than leaving it up to state law
- Make specific bequests
- Save needless administrative expenses
- Nominate your Executor rather than having the court appoint an Administrator



What Happens Without a Will

- If you die without a Will, distribution of your property is made according to State law
- Under State law, distribution of property is based on your marital status
- If you are separated or in the process of getting a divorce, you are treated under the law as a married individual. With proper planning, you can disinherit a spouse.



Death Without a Will – Single Individual

- If no spouse, but with children, your assets pass to your children in equal shares
- If no spouse and no children, then your assets pass to your parents, if living
- If no spouse, no children and no parents, then your assets pass to your siblings



Death Without a Will – Married Individuals

- If married without children or with children of which the surviving spouse is the natural or adoptive parent of all the children, then **all assets go to the surviving spouse**
- If married with one child who is not the natural or adoptive child of the surviving spouse, the surviving spouse takes the first \$20,000, plus one-half of the balance of the property, the remainder to the child
- If married with more than one child and the surviving spouse is the natural or adoptive parent of at least one of the children, the surviving spouse takes the first \$60,000, plus one-third of the balance of the property, the remainder equally to the children



Why is Property Ownership Important in Estate Planning?

- A Will only controls certain property (i.e., only property titled in your name alone)
- Certain jointly owned property passes automatically to the survivor without regard to your Will
- Insurance proceeds and retirement plan death benefits will be paid to the designated beneficiary



Why is Property Ownership Important in Estate Planning?

- Transfer on Death (TOD) and payable on Death (POD) assets pass to the TOD or POD beneficiary
- Jointly owned property does not reduce estate taxes



Estate Planning Tips

1. Plan for disability
2. Everyone needs a Will
3. Nominate a guardian for minor children
4. Nominate a trustworthy executor
5. State law determines distribution of assets without a Will
6. Titling of assets is important
7. Do not name your estate as beneficiary
8. State and federal law determine estate taxes
9. Contact an attorney before gifting over \$14,000



Probate Court

- Each county has its own rules and most likely has its own forms
- Look at the county's local rules
- Look at the county's local forms
 - <http://probate.franklincountyohio.gov/forms/>
- Most counties require original signatures on their forms and do not allow or use e-filing
- Franklin County allows e-filing for civil cases and adoptions



Fiduciary Titles

- Executor
- Administrator
- Administrator WWA



Probate Vs. Non-Probate Property

Probate Property

- Property owned by decedent in his or her sole name at their death

Non-Probate Property

- Any asset that is jointly owned with a right of survivorship, has a transfer on death or pay on death beneficiary, has a designated beneficiary, or is titled in the name of a trust or third party
- Not affected by a will or probate laws



Types of Probate Cases

- Civil
- Name Changes
- Guardianships
- Adoptions
- Estate Administration
 - Basic Types:
 - Real Estate Only
 - Summary Release from Administration
 - Release from Administration
 - Full Estate Administration



Types of Estate Administration

- Real Estate Only
- Summary Release from Administration
 - If there is a surviving spouse, estates less than \$40,000
 - If not, estates less than \$5,000
- Release from Administration
 - If there is a surviving spouse, estates less than \$100,000
 - If not, estates less than \$35,000
- Full Estate Administration



Self-representation Issues

- Misidentifying/lacking knowledge of assets.
- Misidentifying/lacking knowledge of beneficiaries and/or family members.
- Often times not objective and/or have self-interest in the issue.



Self-representation Issues

- Requesting legal assistance after undertaking self-representation.
(Clean-up needed)
- Process can take longer than anticipated.
- Process can become more complicated than anticipated.



QUESTIONS



For Further Information or Questions Contact:



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